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Systems Electric & Maintenance and James Tatton d/b/a Electrical Services Company, Single Employer and/or Alter Ego and International Brotherhood of Electrical Workers, Local Union No. 5, AFL-CIO, CLC. Case 6-CA-27054

February 20, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge and an amended charge filed by International Brotherhood of Electrical Workers, Local Union No. 5, AFL-CIO, CLC (the Union) on February 15 and October 11, 1995, respectively, the General Counsel of the National Labor Relations Board issued an amended complaint on November 7, 1995, against Systems Electric & Maintenance and James Tatton d/b/a Electrical Services Company, single employer and/or alter ego (Respondent Systems and Respondent Electrical Services, or collectively the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and amended complaint, the Respondent failed to file an answer.¹

On January 11, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On January 18, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended complaint will be considered admitted.

¹ By letters dated November 17 and December 5, 1995, counsel for the Respondent advised the Region that the Respondent would not be filing an answer to the amended complaint and that the answer previously filed by the Respondent Systems to the original complaint was being withdrawn.

Nevertheless, the Respondent failed to file an answer to the amended complaint.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the amended complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Systems, a Pennsylvania corporation with an office and place of business in Glassport, Pennsylvania (Respondent Systems' facility) has been engaged in the business of electrical design and construction.

At all material times since about September 1, 1995, Respondent Electrical Services has been owned by James Tatton, a sole proprietorship, doing business as Electrical Services Company. At all material times since about the same date, Respondent Electrical Services, a sole proprietorship with an office and place of business in West Mifflin, Pennsylvania (Respondent Electrical's facility) has been engaged in the business of electrical design and construction.

At all material times, Respondent Systems and Respondent Electrical Services have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Based on these operations, Respondent Systems and Respondent Electrical Services constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

About September 1, 1995, Respondent Electrical Services was established by the Respondent as a disguised continuation of Respondent Systems. Based on this conduct, Respondent Systems and Respondent Electrical Services are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

During the 12-month period ending January 31, 1995, Respondent Systems, in conducting its business operations, performed services valued in excess of \$50,000 within the Commonwealth of Pennsylvania for customers such as Wal-Mart, Inc., which are themselves directly engaged in interstate commerce, and purchased and received at its Pennsylvania jobsites goods valued in excess of \$50,000 from other enterprises within the Commonwealth of Pennsylvania, each of which other enterprises had received those goods directly from points outside the Commonwealth of Pennsylvania.

Based on its operations since about September 1, 1995, at which time Respondent Electrical Services commenced its operations, Respondent Electrical Services will annually purchase and receive at its Pennsylvania jobsites goods valued in excess \$50,000 from other enterprises within the Commonwealth of Pennsylvania, each of which other enterprises had received those goods directly from points outside the Commonwealth.

We find that Respondent Systems and Respondent Electrical Services, both separately and collectively, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About September 1994, the Respondent, at its Wal-Mart jobsite:

(a) Threatened its employees with discharge if they supported or joined a union.

(b) Created the impression among its employees that their union activities were under surveillance.

About late September 1994, the Respondent, by oral announcement, promulgated a rule restricting its employees from talking on the job and from talking to any "union man" on the job.

About late September 1994, the Respondent, at its Glassport facility:

(a) Threatened its employees with discharge if they attempted to obtain union representation.

(b) Threatened its employees that Respondent Systems would go out of business if a union came in.

(c) Isolated its employees to prevent union and other concerted activity.

(d) Interrogated its employees concerning their union sympathies.

About October 7, 1994, the Respondent discharged its employee Mark Robertson and since said date has failed and refused to employ him.

The Respondent engaged in the conduct described above because Robertson formed, joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging and refusing to employ Mark Robertson, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby

discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging and refusing to employ Mark Robertson since October 7, 1994, we shall order the Respondent to offer employee Robertson immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and notify Mark Robertson in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Systems Electric & Maintenance and James Tatton d/b/a Electrical Services Company, Single Employer and/or alter ego, Glassport and West Mifflin, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union sympathies.

(b) Isolating employees to prevent union and other concerted activity.

(c) Threatening employees with discharge if they support or join a union or attempt to obtain union representation.

(d) Threatening employees that it will go out of business if a union comes in.

(e) Creating the impression among its employees that their union activities are under surveillance.

(f) Promulgating a rule restricting employees from talking on the job and from talking to any "union man" on the job.

(g) Discharging or otherwise discriminating against employees because they formed, joined, supported, or assisted the International Brotherhood of Electrical Workers, Local Union No. 5, AFL-CIO, CLC, or en-

gaged in concerted activities, or to discourage employees from engaging in such activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Mark Robertson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this section.

(b) Remove from its files any reference to the unlawful discharge of Mark Robertson and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Glassport and West Mifflin, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 20, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees concerning their union sympathies; isolate employees to prevent union and other concerted activity; threaten employees with discharge if they support or join a union or attempt to obtain union representation; threaten employees that we will go out of business if a union comes in; create the impression among our employees that their union activities are under surveillance; promulgate a rule restricting employees from talking on the job and from talking to any "union man" on the job; or discharge or otherwise discriminate against employees because they formed, joined, supported, or assisted the International Brotherhood of Electrical Workers, Local Union No. 5, AFL-CIO, CLC or engaged in concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Mark Robertson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL remove from our files any reference to the unlawful discharge of Mark Robertson and notify him in writing that this has been done and that the discharge will not be used against him in any way.

SYSTEMS ELECTRIC & MAINTENANCE
AND JAMES TATTON D/B/A ELECTRICAL
SERVICES COMPANY, A SINGLE EM-
PLOYER AND/OR ALTER EGO